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13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 vs.

21 SMALL BUSINESS CAPITAL CORP.;
22 MARK FEATHERS; INVESTORS PRIME
23 FUND, LLC; AND SBC PORTFOLIOS,
24 LLC,

25 Defendants.

Case No. CV12-03237

**RECEIVER'S SPECIAL REPORT
CONCERNING ASSET SALE**

Ctrm: 4 - 5th Floor
Judge: Hon. Edward J. Davila

1 Thomas A. Seaman ("Receiver"), is the Court-appointed permanent receiver for
2 Small Business Capital Corp. ("SBCC"), Investors Prime Fund, LLC ("IPF"), SBC
3 Portfolio Fund, LLC ("SPF") and their subsidiaries and affiliates, including Small Business
4 Capital, LLC ("SBC LLC") and SBC Senior Commercial Mortgage Fund, LLC ("SCMF")
5 (collectively, "Receivership Entities").

6 On May 11, 2015, the Court entered the Order Granting in Part and Denying in Part
7 Motion for Approval to Sell 7(A) Loan Portfolio, Servicing Rights and SBLC License (the
8 "Sale Order") [Docket No. 1047]. Pursuant to the Sale Order, BusinessUS LLC was
9 approved to purchase the 7(a) Loan Portfolio, Servicing Rights and SBLC License
10 (collectively the "Assets") pursuant to the Loan Purchase and Sale Agreement dated
11 April 3, 2015 (the "Agreement"). At all times since the entry of the Sale Order, the
12 Receiver has been ready, willing and able to close the sale of the Assets.

13 The Agreement called for the sale to close on or before June 10, 2015. Following
14 entry of the Sale Order, the Receiver immediately contacted BusinessUS concerning the
15 timing to close the sale, and the payment of the \$179,000, reflecting the balance of the
16 deposit due under the Agreement (based upon the total sales price of the Assets approved
17 under the Sale Order.) BusinessUS informed the Receiver that it would immediately
18 transmit the balance of the deposit and indicated that it was ready to close the Sale as soon
19 as it resolved matters with the Small Business Administration (the "SBA").

20 In following up with the SBA, the Receiver learned that BusinessUS had materially
21 changed its submissions to the SBA with regard to a number of matters including but not
22 limited to its management structure and financing. The Receiver also learned that contrary
23 to prior representations, BusinessUS did not have the financing in place to timely close the
24 sale.

25 Over the next several weeks BusinessUS repeatedly assured the Receiver that it
26 would deliver the balance of the deposit but it repeatedly failed to do so. On June 5, 2015,
27 the Receiver was copied on a letter to BusinessUS from the SBA whereby the SBA stated
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1 that they would not approve BusinessUS as the purchaser of the Assets based upon the
2 material deficiencies in their application.

3 As a result of BusinessUS's failure to comply with the Agreement including but not
4 limited to its failure to make a timely deposit and failure to close the sale of the Assets on
5 or before June 10, 2015, BusinessUS has defaulted under the Agreement. It is the
6 Receiver's intention to retain the \$300,000 deposit made by BusinessUS. The Receiver has
7 demanded BusinessUS also pay \$179,000, reflecting the balance of the deposit. Should
8 BusinessUS fail to promptly remit these sums, the Receiver intends to file an action in this
9 Court to collect \$179,000 plus attorney's fees and costs.

10 In light of BusinessUS's breach of the Agreement, the Receiver intends to reopen its
11 marketing efforts with regard to the Assets. In addition, the Receiver is analyzing the
12 possibility of placing the Assets in a liquidating trust, subject to approval from this Court.
13 The Receiver expects to present a proposal to this Court as to how to proceed in the next
14 30 days.

15
16 Dated: June 12, 2015

17
18 By: Thomas A. Seaman
19 THOMAS A. SEAMAN, Receiver

20 Dated: June 12, 2015

21 ALLEN MATKINS LECK GAMBLE
22 MALLORY & NATSIS LLP

23 By: /s/ David R. Zaro
24 DAVID R. ZARO
25 Attorneys for Receiver
26 THOMAS A. SEAMAN
27
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PROOF OF SERVICE

Securities and Exchange Commission v. Small Business Capital Corp; Mark Feathers, et al.
USDC, Northern District of California – San Jose Division – Case No. 5:12-cv-03237-EJD

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

RECEIVER'S SPECIAL REPORT CONCERNING ASSET SALE

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **June 12, 2015**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Eric James Adams**
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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On **June 12, 2015**, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit.

Pro Se Defendant

U.S. First Class Mail

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I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **June 12, 2015** at Los Angeles, California.

/s/ Michael Mason

Michael Mason